



CCMI/174

Public procurement in cleaning and facility services

OPINION

European Economic and Social Committee

**Public procurement as a tool to create value and dignity in work in cleaning and facility services
(own-initiative opinion)**

Rapporteur: **Diego DUTTO**

Co-rapporteur: **Nicola KONSTANTINOU**

Plenary Assembly decision	18 February 2020
Legal basis	Rule 32(2) of the Rules of Procedure Own-initiative opinion
Body responsible	Consultative Commission on Industrial Change (CCMI)
Adopted in CCMI	02/09/2020
Adopted at plenary	18/09/2020
Plenary session No	554
Outcome of vote (for/against/abstentions)	192/7/18

1. Conclusions and recommendations

- 1.1 The European Commission (EC), the European Parliament and the Member States must develop the necessary support instruments to promote the use of strategic public procurement to advance the systematic use of sustainable, transparent, ambitious and enforceable strategic criteria to ensure higher social and quality standards in public procurement.
- 1.2 To ensure that the focus of cleaning services is put on quality and not on price, the principle of transparency must be upheld for both client and contractor. Contract specifications have to be defined and itemised, including frequency, time, occupational health and safety (OSH) and financial costs of cleaning¹. Assessing the application of these criteria during the entire contract life is key for the evaluation of the quality of the cleaning services provided.
- 1.3 The social partners should be involved in the training and professionalisation of public buyers as stipulated in the EC recommendation of 3/10/2017².
- 1.4 The EC and Member States should take the initiative to fight undeclared work and to further improve employment conditions in the cleaning industry. Strengthened regulation and stronger enforcement mechanisms such as wage criteria and sectoral collective bargaining can contribute to fair competition, higher social standards and quality employment.
- 1.5 The EESC calls on the EC, the EP, the Member States and regional and local authorities to use daytime cleaning in all public procurement wherever possible.
- 1.6 Ensuring fair competition can be achieved by focusing on quality aspects and respect for the jurisprudence of the ECJ and national rules concerning the possibility of making respect for collective agreements a condition for awarding public contracts. Member States, together with social partners and according to national practices, should promote the coverage of collective agreements in the national cleaning industry at the sectoral level and ensure that they are enforced.
- 1.7 The sector's workforce is predominantly composed of women and non-EU nationals. They may therefore be more directly affected by the purchasing policies of public administrations. Thus, the EESC believes that in addition to collective agreements, additional safeguards should be developed to uphold the principles of non-discrimination and equal treatment of workers. The EESC suggests introducing additional points, in tender award criteria rewarding forms of integration such as dedicated training courses, family support services such as after-school assistance for minors and other forms of corporate welfare with a social content.
- 1.8 The EESC recommends, when revising the 2014 EU Procurement Directives, that the costs of mandatory security and training be shown outside the area of competitive pricing, as an incompressible and verifiable element of the breakdown of the costs that make up the tender.

¹ <http://www.europeancleaningjournal.com/magazine/articles/latest-news/managing-quality-in-german-contract-cleaning>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017H1805&from=EN>

- 1.9 The EESC recommends that sustainability conditions, labour rights and generally applicable collective bargaining agreements be respected (by holding the contracting authority, the main contractor and the sub-contractors responsible, each for their immediate contractual partner) throughout the subcontracting chain and during the entire execution of the contracts.
- 1.10 The EESC calls on the Member States, if they do not already do so, to pay special attention to and effectively check respect for all statutory and contractual obligations and OSH aspects concerning social, environmental and sustainability aspects in the execution phase of public tenders in the cleaning industry.
- 1.11 With respect to the obligations incumbent upon Member States, contracting authorities and the EC established by Articles 83-85 of Directive 2014/24, the EESC asks all these public bodies to make the corresponding data available without further delay, ensuring in particular that the award criteria and their relative weighting for cleaning contracts are provided. The EC is asked to financially support the sectoral social partners' follow-up projects and research into the issue of public procurement in cleaning and facility services.
- 1.12 The EC should strengthen the legislative architecture and bargaining capacity of the social partners at national level, including by allocating funding for capacity-building actions especially in South-Eastern, Central and Eastern European countries³.
- 1.13 The EESC recommends that, in the revision of the 2014 European Procurement Directives, for labour intensive services such as cleaning services, EU directives on public procurement should **ask or require** the Member States to exclude the use of the lowest price criterion for the award of tenders, to set a ceiling of 30% on the score to be awarded to the price compared to the score to be awarded to quality and to ensure, by means of specific social clauses, the employment stability of staff employed under the tender, albeit in accordance with the "TUPE" Directive (No 2001/23/EC) and interpreted by EU case law, the company's work arrangements and in compliance with collective bargaining.
- 1.14 The EESC calls on the contracting authorities to use their own cost estimates for cleaning services, by consulting specialised sectoral tools such as the Best Value Guide and national examples to adequately assess the sector's market, as well as setting aside part of these services for reserved contracts as stipulated by Article 20 of Directive EU 2014/24, as transposed by the Member States into their own codes on public procurement.
- 1.15 The EC should encourage Member States to start an accreditation process or qualification system for contractors who wish to be considered for public cleaning contracts. This process should be supervised by an evaluation committee made up of a number of different stakeholders, including trade unions and a representative of sector contractors.

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<https://www.eurofound.europa.eu/publications/report/2019/representativeness-of-the-european-social-partner-organisations-industrial-cleaning-sector#tab-01>

- 1.16 As the risk of COVID-19 still exists, the risk of contagion from COVID-19, or any other such disease, requires workers and the public to be protected. The EESC recommends that the EC and the Member States draw up binding protocols on OSH at work with the help of the social partners.
- 1.17 The EESC further calls on the Member States to take action and engage with the social partners to discuss practical temporary solutions for a quick return to fair and quality-oriented procurement practices.
- 1.18 In light of the COVID-19 crisis, the EESC recommends that the Member States advance the training and professionalisation of cleaning staff. Financial resources should be made available so that public authorities and contracting companies can invest in training and skills. Workers employed in cleaning and sanitation services should be encouraged to gain professional qualifications, laying the groundwork for improved job opportunities for vulnerable individuals.
- 1.19 The EESC advocates that the EU institutions, the Member States and local and regional authorities adopt a comprehensive approach to the purchasing of cleaning services. Such an approach does not envisage a trade-off between environmental and labour conditions, but advances social cohesion, labour standards, gender equality and the environmental goals proposed by the EC's Green Deal.

2. **General comments**

- 2.1 The main purpose of this opinion is to propose recommendations for using public procurement to enhance good quality employment and dignity at work in cleaning and facility services.
- 2.2 Many of these recommendations are general in scope and can be applied across all sectors of the economy. This is particularly the case for labour-intensive service sectors such as private security and catering.

3. **Background and context**

- 3.1 "Every year, over 250 000 public authorities in the EU spend around 14% of GDP (around EUR 2°trillion per year) on the purchase of services, works and supplies."⁴ Services such as cleaning make up the main part of public procurement. In 2017, the award value for services reached EUR 250 billion⁵.
- 3.2 Public procurement can support investment in the real economy, ensure and create good quality jobs and promote inclusion and better conditions for disabled and disadvantaged people as well as migrant workers⁶. It can also encourage demand for innovative products, pursue industrial

4 https://ec.europa.eu/growth/single-market/public-procurement_en

5 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/631048/IPOL_STU\(2018\)631048_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/631048/IPOL_STU(2018)631048_EN.pdf), p. 14

6 https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers/social-procurement_en

policy objectives and promote the transition to a resource and energy efficient circular economy⁷.

- 3.3 In reference to EU Procurement Directive 2014/24, the use of the "Economically Most Advantageous Tender" (EMAT) criteria should incorporate all strategic criteria addressed in point 3.2 above. As the rules remain vague, the majority of public contracts continue to be awarded to the lowest bidder, sometimes even to an abnormally low tender (ALT)⁸.
- 3.4 The Public Procurement Directives are not being utilised to their full potential and application diverges between the Member States. Consequently, a public authority must decide on its priorities⁹.
- 3.5 This is first a political and then a technical issue. The decision of which services to purchase and which award criteria to use with which relative weighting is part of the political decision-making process. Such decisions set the frame and the fundamental parameters for the award procedure. Failing to take workers', environmental and social rights into consideration would create an unequal playing field.

4. **The COVID-19 crisis, the cleaning services industry and public procurement**

- 4.1 The COVID-19 pandemic has underlined the fundamental value of cleaners' work as a common public good. Contracting companies need to meet requirements of qualification, efficiency and specialisation. In their joint statement of 22/4/2020, the EU social partners EFCI and UNI Europa highlight the crucial role of the cleaning industry and its workers in preventing the spread of the virus¹⁰.
- 4.2 In 2018, there were 4.11 million cleaners in the EU working across 283 506 companies. There has been a steady increase in turnover since the mid-2010s. At the same time, turnover per company reached EUR 393 000 in 2017. According to EFCI, "the average turnover per employee reached almost EUR 30 000". Turnover per employee amounts to EUR 27 400 and workers earn a yearly average wage of EUR 12 200. The European cleaning industry has a large part of its workforce working on a part-time basis. Moreover, in a labour-intensive sector such as this, companies' margins do not exceed 3%. Contracting companies incurred additional expenditure due to the COVID-19 pandemic, through the need to protect both their clients' interests and their own workers. The proportion of part-time workers, women and immigrant workers is particularly high. The percentage of women employees is always over 50% (except

⁷ The EC provides a series of support tools for public buyers, not only the one on social procurement, and all of these aspects should be taken into consideration: https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers_en

⁸ This is addressed in the 2014 EU Directive on Public Procurement, Article 69.

⁹ Jeremy Prassl, *The Future of EU Labour Law*.

¹⁰ Joint Statement on the COVID-19 impact on the Industrial Cleaning and Facility Services sector and the necessary measures to protect it, <https://www.uni-europa.org/2020/04/22/joint-statement-on-the-covid-19-impact-to-the-industrial-cleaning-and-facility-services-sector-and-the-necessary-measures-to-protect-it/>

in Denmark), with peaks of over 80% in Lithuania, Luxembourg, Portugal and the UK¹¹. Across the EU, 30% of cleaners are immigrants (60% in Belgium).

- 4.3 Barriers to entry in the cleaning and facility services market are low to non-existent. Cleaning services are labour-intensive, with nearly 80% of companies' revenue accounting for labour costs and very tight margins for cleaning contractors. Thus, public or private, clients' purchasing decision lead to downward pressure on prices, undermining social standards and the dignity of cleaning work.
- 4.4 During and subsequent to the COVID-19 crisis, cleaning and facility services can only ensure value and achieve high standards of quality employment if cleaners are sufficiently qualified and have the right technical equipment and there is a clear definition of the rights and obligations of employers and employees. This could require public authorities to pay a higher price for cleaning services. Indeed, due to the suspension of activities during the COVID-19 crisis, many business services providers faced severe cash-flow problems and sustained increased costs to implement the health and safety measures required to protect both workers and clients. These financial problems are exacerbated by bad contracting practices, from public and private buyers. In order to support companies in continuing to ensure the health and safety of their cleaning agents as well as maintaining and enhancing the quality of their employment conditions, the EESC calls on public and private buyers to ensure a quick return to efficient public procurement, fair contracting practices and better consideration of quality criteria.¹² Cleaners often work in dangerous and hazardous circumstances that can put their own health at risk¹³. Although some workers prefer to work part-time, some workers wish to work longer hours or full-time. It can sometimes, however, be difficult for employers to offer full-time contracts. Furthermore, despite the social partners' commitment to daytime cleaning, cleaning services are frequently provided by workers who work alone during the night. This is often due to the requirements of the client. Such employment practices contribute to cleaners' labour remaining invisible¹⁴, under-valued and unrecognised¹⁵. Unfortunately, zero-hour contracts still exist in some Member States. Public authorities bear responsibility insofar as they continue to manage the contract, monitor it and assess quality. The aim should be to increase the opportunities for workers to work during the day, in a single shift and be employed on full-time contracts to improve quality of life.
- 4.5 Using the lowest price as the only award criterion for public contracts undermines quality service provision and contributes to the deterioration of working conditions, to quality shading

11 Eurofund (2019) Representativeness Study for the Industrial Cleaning Sector, p. 19:

https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19012en.pdf

12 http://servicealliance.eu/wp-content/uploads/2020/05/EBSA-Statement_Contracting-recommendations-during-COVID_13-5-2020.pdf

13 Bergfeld, Mark (2020) *The Insanity of Making Sick People work*, Jacobin Magazine: <https://jacobinmag.com/2020/03/coronavirus-workers-rights-health-care-cleaners-gig-economy>

14 Bergfeld, Mark & Ylitalo, Jaana - *Putting Europe's invisible precariat in the spotlight*, Social Europe, 18 April 2019, <https://www.social europe.eu/europes-invisible-precariat>

15 *When Creativity Meets Value Creation. A Case Study on Daytime Cleaning: Volume VIII: Ergonomics and Human Factors in Manufacturing, Agriculture, Building and Construction*, Sustaina.

(lower quality) and to shirking (lower effort)¹⁶. As cleaning is a heterogeneous task and not easily quantifiable, quality is difficult to assess both during the process and afterwards. That is why it is important to base quality on outcome and across the whole lifecycle rather than process.

- 4.6 The expression "lowest price" has disappeared from the text of Directives 2014/24, but the award based on "price only" is allowed (Article 67.2 last paragraph). This means that some contracting authorities continue to award contracts to the lowest tender, and sometimes even to ALT. Countries wishing to use the EMAT criterion for labour intensive services will need to go one step further by directing administrations towards effective use of this criterion by defining a ceiling on the weight of the price and using formulas that to not exasperate the price differences between offers. To this end, specific training for the professionalisation of procurement officers is required. In addition, the next review of the directives should introduce mandatory rules for (a) the identification of possible ALT by setting a difference of 20% from the next lowest tender for triggering the obligation to check, (b) a thorough check on whether the tenderer has objective and plausible reasons for their low tender and (c) the exclusion of such tenders if the tenderer did not provide such reasons.
- 4.7 Thus, the crisis is an opportunity for cleaning companies and their workers to enhance the value and fundamental importance of cleaning vis-à-vis the public and its direct clients. The Best Value Guide¹⁷, developed by the EU cleaning industry's social partners in 2017, can steer public and private organisations awarding contracts for cleaning services towards contracts offering the best value. Similar tools have been developed by some national social partners.
- 4.8 Digitalisation is creating opportunities and challenges for low-skilled workers in this sector, and the EU social partners believe that technologies can be used to enhance the recognition of the value of cleaners' work, the relevance of cleaning at large, and create extra value for buyers of cleaning services¹⁸. EFCI's SK-Clean project will map the changing skills needs of the sector and become a tool to work towards increased professionalisation of cleaners¹⁹.
- 4.9 The new context generated by the COVID-19 emergency requires that competent authorities ensure the dissemination of information on how to use PPE as well as the provision of appropriate PPE to protect workers and individuals. Businesses require financial support to cover the rising additional costs of organisational measures, risk assessments, analysis and the distribution of PPE to the workforce²⁰. Meanwhile, investments by contracting companies are

16 *Evidence from Public Administration Review*, Vol. 79, Iss. 2, pp. 193–202.

17 <http://www.cleaningbestvalue.eu/>

18 See EFCI: <https://www.efci.eu/wp-content/uploads/2019/02/Digital-transition-in-cleaning-industry-in-FR.pdf>
https://www.efci.eu/wp-content/uploads/2019/10/2019-10-29_Joint-statement-on-digitalisation-EFCI-UNI-Europa-29.10.2019.pdf
& https://www.efci.eu/wp-content/uploads/2019/10/2019-10-29_Joint-statement-on-digitalisation-EFCI-UNI-Europa-29.10.2019.pdf

19 SK-Clean Project.

20 UNI-CoeSS statement: <https://www.uni-europa.org/2020/05/08/private-security-joint-declaration-ensuring-business-continuity-and-protection-of-workers-in-the-covid-19-pandemic/>

fundamental to being able to offer their clients cleaning solutions which are innovative and more effective due to being based on chemical and biological research.

5. Public procurement and the Green Deal

- 5.1 The Green Deal proposes that public procurement can be used to reduce carbon emissions. A comprehensive approach is needed however.
- 5.2 The cleaning sector can contribute to a green transition and circular economy with green labels for green cleaning products, soap, toilet paper, paper towels and good waste sorting. This is also the aim of the Ecolabels for cleaning services²¹ and cleaning products²², even if their efficiency in practice is not evident. If the use of green products and procedures is not accepted by the client, it may result in cost increases which would create higher pressure on all cost elements. This might also lead to worsening social, labour and OSH conditions. In addition, all of this might also lead to more restricted access to procurement opportunities for SMEs²³. That is why a comprehensive approach to public procurement is needed.
- 5.3 Research suggests that the environmental criteria are too weak to actually incentivise suppliers to undertake changes²⁴. Private service contractors who are committed to the environment are prevented from using their full potential if contracting authorities are unwilling to pay the additional costs. Thus, it requires greater professionalisation of purchasers.

6. Social and quality considerations in public procurement

- 6.1 Article 18(2) of Directive 2014/24 states that "Member States should guarantee that 'the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X."
- 6.2 The EC's Buying Social Guide of October 2010 sets out various social considerations for contracting authorities such as the prohibition of child and forced labour, OSH requirements, minimum wage obligations, social security requirements and more generally decent work standards²⁵. As these are statutory obligations they have to be respected, whether they are mentioned in contract performance clauses or not.

21 https://ec.europa.eu/environment/ecolabel/documents/Cleaning_Services_Factsheet_Final.pdf and <http://www.ecolabelindex.com/ecolabel/cleaning-industry-management-standard-cims>

22 <http://www.ecolabelindex.com/ecolabels/?st=category.cleaning>

23 Sofia Lundberg & Per-Olov Marklund (2016) *Influence of Green Public Procurement on Bids and Prices*, <https://www.nhh.no/globalassets/departments/business-and-management-science/seminars/2016-spring/120516.pdf>

24 Sofia Lundberg & Per-Olov Marklund (2016) *Influence of Green Public Procurement on Bids and Prices*, <https://www.nhh.no/globalassets/departments/business-and-management-science/seminars/2016-spring/120516.pdf>

25 *Buying social* (fn.43), p. 47.

- 6.3 According to recital 98 of Directive 24/14, the conditions for the performance of the contract may also be intended to facilitate the implementation of measures to promote equality between women and men at work and the reconciliation of work and private life.
- 6.4 In order to avoid labour costs being used as the main element of competition among bidders, all bidders (including subcontractors) must respect minimum standards established locally by law or by binding and generally applicable collective agreements regarding labour costs and standard clauses in public contracts. Binding and generally applicable sectoral collective agreements can ensure a level playing field.
- 6.5 While tools such as the Best Value Guide can alleviate in-work poverty and contribute to social cohesion in EU Member States, it does not strengthen the social partners at sectoral level or contribute to their capacity to establish binding sectoral collective bargaining systems. The Member States, which have competence in this area, will have to tighten up the rules on the application of collective bargaining in procurement.
- 6.6 Public institutions such as kindergartens, schools, care homes and hospitals have become brands and compete with other institutions for clients. In this competition, "cleanliness" and quality in cleaning are thus considered a distinguishing factor, directly contributing to user-satisfaction and competitiveness.
- 6.7 The lack of use of quality and social considerations in public procurement also has negative implications for labour turnover, which represents a triple loss situation for employers, clients and workers²⁶.
- 6.8 Promotion of education and training in the workplace ensure superior quality and workers' rights in public procurement. Vocational Education Training, certification and official recognition of qualifications contribute to the recognition of the sector. The recognition of their importance in the tendering process would enhance their valorisation and allow for better understanding of the costs they entail for companies, which need to be sufficiently recognised both in the price and in wages. Responsibility for training workers lies with the cleaning company; accepting the lowest bid generates the risk that companies will not be able to afford to invest in training and safety (or in machinery, innovation and related training) other than the minimum required by law.

Brussels, 18 September 2020.

Luca Jahier

The president of the European Economic and Social Committee

²⁶ Market Exposure and the Labour Process: The Contradictory Dynamics in Managing Subcontracted Services Work. REFERENCES.

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N.B.: Appendix overleaf

APPENDIX
to the
OPINION
of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions:

Point 1.10

Delete the point:

~~The EESC calls on the Member States to pay special attention to and effectively check respect of all statutory and contractual obligations concerning social, environmental and sustainability aspects in the execution phase of public tenders in the cleaning industry.~~

Result of the vote:

For: 61
Against: 105
Abstentions: 9

Point 2.1

Amend as follows:

The main purpose of this opinion is to propose recommendations for using public procurement to enhance good quality employment ~~and dignity at work~~ in cleaning and facility services.

Result of the vote:

For: 61
Against: 107
Abstentions: 9

Point 4.3

Amend as follows:

Barriers to entry in the cleaning and facility services market are low to non-existent. Cleaning services are labour-intensive, with nearly 80% of companies' revenue accounting for labour costs and very tight margins for cleaning contractors. Thus, public or private, clients' purchasing decision lead to downward pressure on prices, ~~undermining social standards and the dignity of cleaning work.~~

Result of the vote:

For: 61
Against: 108
Abstentions: 8
